GOVERNMENT OF INDIA
LAW AND JUSTICE
LOK SABHA

UNSTARRED QUESTION NO:4835
ANSWERED ON:19.12.2002
PATENT RELATED LITIGATION
VINAY KUMAR SORAKE

Will the Minister of LAW AND JUSTICE be pleased to state:

(a) whether global legal experts have commented that India needs to upgrade its legal system to handle patent-related litigation and to allow patent in all areas of technology;

(b) whether according to these experts even Japan which had a weak patent system has restructured legal education, training lawyers and creating a special pool of judges to handle patent related cases; and

(c) whether WTO Doha round resolutions might work for poor countries with absolutely no technical base in the matter of special protection and concession but not for India; and

(d) if so, reaction of the Government thereto?

Answer

MINISTER OF STATE FOR COAL, MINES, LAW AND JUSTICE (SHRI RAVI SHANKAR PRASAD)

(a),(b),(c)&(d): Government is not aware of any such comments of global legal experts. The Patent Act, 1970, as amended by the Patents (Amendment) Act, 2002 has fulfilled India`s international obligation contained in the TRIPS Agreements of WTO Agreement. In order to ensure speedy disposal of appeals against the decisions of the Controller of Patents, which at present lie to the High Court, the provisions relating to the setting up of the Intellectual Property Appellate Board contained in the Trademarks Act, 1999, with suitable modifications, have been made applicable to the Patent law by the Patents (Amendment) Act, 2002 (Chapter XIX).The Act provides for appointment of Technical Member having experience in matters relating to patents.

Doha Ministerial Declaration has provided a mandate to address the issue of relationship between the TRIPS Agreement and the CBD and protection of traditional knowledge and folklore as outstanding implementation issues.Doha Declaration on the TRIPS Agreement and Public Health provides for exemption to LDCs till 1.1.2016 for implementing or applying the provisions of Section 5 (Patents) and Section 7 (Protection of Undisclosed Information).Doha Declaration on the TRIPS Agreement on Public Health affirms that the TRIPS Agreement can and should be interpreted to protect public health and promote access to medicines for all.The Declaration recognizes the affordability and availability of medicines as a universal right. The Ministers agreed that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. The Declaration reaffirms the Members` right to use, to the full, the flexibility of compulsory license and parallel import for the purpose of public health. It clarifies that the governments have freedom to determine the grounds to grant compulsory licenses. The Declaration also clarifies that each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency for issuing compulsory license on an expeditious basis. The Declaration also clarifies that each Member is free to establish its own regime for exhaustion of IPRs (parallel import).